

EXHIBIT C

Richard S. Bercik, M.D.

1 IN THE UNITED STATES DISTRICT COURT FOR THE COURT
2 SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

4 Master File No. 2:12-MD-02327
5 MDL No. 2327
6 Case No. 2:13-CV-24578

7 - - - - -X
8 IN RE: ETHICON, INC. PELVIC :
9 REPAIR SYSTEM PRODUCTS :
10 LIABILITY LITIGATION, :
11 :
12 - - - - -X
13 THIS DOCUMENT RELATES TO: :
14 TERRI FREEMAN, ET AL., :
15 :
16 PLAINTIFFS :
17 :
18 VS :
19 :
20 ETHICON, INC., ET AL., :
21 :
22 DEFENDANTS :
23 - - - - -X

24 Teleconference deposition of RICHARD S.
BERCIK, M.D. taken at the Trumbull Marriott Merritt
Parkway, 180 Hawley Lane, Trumbull, Connecticut,
before San Edwards, RPR, a Professional Shorthand
Reporter and Notary Public, in and for the State of
Connecticut on October 1, 2019, at 1:20 p.m.

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<p>1 A P P E A R A N C E S:</p> <p>2 ON BEHALF OF THE PLAINTIFFS:</p> <p>3 ALEX BARLOW, ESQ.</p> <p>4 SHRADER & ASSOCIATES, L.L.P.</p> <p>5 3900 Essex Lane, #390</p> <p>6 Houston, Texas 77027</p> <p>7 t: 713-338-9094; f: 713-571-9605</p> <p>8 barlow@shraderlaw.com</p> <p>9</p> <p>10 ON BEHALF OF THE DEFENDANTS:</p> <p>11 ROBIN SHAH, ESQ. (via videoconference)</p> <p>12 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP</p> <p>13 4 Times Square</p> <p>14 New York, New York 10036</p> <p>15 t: 212-735-3000; f: 212-735-2000</p> <p>16 robin.shah@skadden.com</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 BRIAN CAPOUCH, VIDEOGRAPHER</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 (Whereupon, Defendant's Exhibit No.</p> <p>2 1, Notice Of Deposition, was marked</p> <p>3 for identification.)</p> <p>4 (Whereupon, Defendant's Exhibit No.</p> <p>5 2, Dr. Richard Bercik's Report, was</p> <p>6 marked for identification.)</p> <p>7 (Whereupon, Defendant's Exhibit No.</p> <p>8 3, Reliance List, was marked for</p> <p>9 identification.)</p> <p>10 (Whereupon, Defendant's Exhibit No.</p> <p>11 4, Terri Freeman's Deposition</p> <p>12 Transcript With Exhibits, was marked</p> <p>13 for identification.)</p> <p>14 (Whereupon, Defendant's Exhibit No.</p> <p>15 5, Dr. Thomas Easter's Deposition</p> <p>16 Transcript With Exhibits, was marked</p> <p>17 for identification.)</p> <p>18 (Whereupon, Defendant's Exhibit No.</p> <p>19 6, Dr. Daniel Elliott's Deposition</p> <p>20 Transcript With Exhibits, was marked</p> <p>21 for identification.)</p> <p>22 (Whereupon, Defendant's Exhibit No.</p> <p>23 7, Dr. Bercik's Curriculum Vitae, was</p> <p>24 marked for identification.)</p>
Page 3	Page 5
<p>1 S T I P U L A T I O N S</p> <p>2 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>3 between counsel representing the parties that each</p> <p>4 party reserves the right to make specific objections</p> <p>5 at the trial of the case to each and every question</p> <p>6 asked and of the answers given thereto by the</p> <p>7 deponent, reserving the right to move to strike out</p> <p>8 where applicable, except as to such objections as</p> <p>9 are directed to the form of the question.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED by and</p> <p>11 between counsel representing the respective parties</p> <p>12 that proof of the official authority of the Notary</p> <p>13 Public before whom this deposition is taken is</p> <p>14 waived.</p> <p>15 IT IS FURTHER STIPULATED AND AGREED by and</p> <p>16 between counsel representing the respective parties</p> <p>17 that the reading and signing of this deposition by</p> <p>18 the deponent is waived.</p> <p>19 IT IS FURTHER STIPULATED AND AGREED by and</p> <p>20 between counsel representing parties that all</p> <p>21 defects, if any, as to the notice of the taking of</p> <p>22 the deposition are waived.</p> <p>23 Filing of the Notice of Deposition with</p> <p>24 the original transcript is waived.</p>	<p>1 (Whereupon, Defendant's Exhibit No.</p> <p>2 8, \$4000.00 Check to Dr. Richard</p> <p>3 Bercik, was marked for</p> <p>4 identification.)</p> <p>5 (Whereupon, Defendant's Exhibit No.</p> <p>6 9, Addition to Reliance List, was</p> <p>7 marked for identification.)</p> <p>8 THE VIDEOGRAPHER: Good afternoon.</p> <p>9 We are now on the record. The time is</p> <p>10 1:23 p.m. The date is October 1st,</p> <p>11 2019.</p> <p>12 We are located in Trumbull,</p> <p>13 Connecticut, for the videotape deposition</p> <p>14 of Dr. Richard Bercik in the matter of</p> <p>15 Terri Freeman versus Ethicon,</p> <p>16 Incorporated, et al. My name is Brian</p> <p>17 Capouch. I'm the videographer for Golkow</p> <p>18 Litigation Services.</p> <p>19 Counsel, please introduce yourselves</p> <p>20 for the record, after which our court</p> <p>21 reporter, San Edwards, will swear in the</p> <p>22 witness.</p> <p>23 MR. BARLOW: Alex Barlow for the</p> <p>24 Freemans.</p>

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: And on the</p> <p>2 phone --</p> <p>3 MS. SHAH: Robin Shah on behalf of</p> <p>4 Ethicon and Johnson & Johnson.</p> <p>5 THE VIDEOGRAPHER: Okay. Thank you</p> <p>6 very much.</p> <p>7 Would you swear in the witness,</p> <p>8 please?</p> <p>9</p> <p>10 RICHARD BERCIK, M.D.,</p> <p>11 practicing at 333 Cedar Street, New Haven,</p> <p>12 Connecticut, 06520, having first been duly sworn,</p> <p>13 deposed and testified as follows:</p> <p>14</p> <p>15 MS. SHAH: I'm sorry. Can we go off</p> <p>16 the record for one second?</p> <p>17 THE VIDEOGRAPHER: Okay. Off the</p> <p>18 record. The time is 1:25.</p> <p>19 (Whereupon, there was a recess taken</p> <p>20 from 1:21 p.m. to 1:38 p.m.)</p> <p>21 (Whereupon, the videographer leaves</p> <p>22 the deposition.)</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 8</p> <p>1 the case-specific expert in this case. Correct?</p> <p>2 MR. BARLOW: He -- he's got specific</p> <p>3 and general opinions. But it's all in</p> <p>4 the report you have.</p> <p>5 MS. SHAH: Okay.</p> <p>6 BY MS. SHAH:</p> <p>7 Q Have you been retained as both a general</p> <p>8 expert and a case-specific expert, Dr. Bercik?</p> <p>9 A My understanding is I was retained as an</p> <p>10 expert. I've given opinions that do -- that are</p> <p>11 general and some that are case-specific.</p> <p>12 Q Okay. And when were you retained as an</p> <p>13 expert in Ms. Freeman's case?</p> <p>14 A I don't remember the exact date. I --</p> <p>15 I'm sure -- I'm sure that the -- Counsel has the</p> <p>16 E-mails related to that. But I don't remember the</p> <p>17 exact date. It was earlier this year.</p> <p>18 Q Okay. And when did you submit your</p> <p>19 report in this case?</p> <p>20 I was looking through, and I -- I didn't</p> <p>21 see a -- a date. I'm not trying to trick you.</p> <p>22 A No. I apologize for that. I can -- I</p> <p>23 can tell you in one second.</p> <p>24 Q Sure.</p>
<p style="text-align: right;">Page 7</p> <p>1 DIRECT EXAMINATION</p> <p>2</p> <p>3 BY MS. SHAH:</p> <p>4 Q Doctor, can you just go ahead and please</p> <p>5 state your full name for the record?</p> <p>6 A Sure. It's Richard S. Bercik, M.D.</p> <p>7 Q And my name is Robin Shah, and I am here</p> <p>8 on behalf of Ethicon and Johnson & Johnson.</p> <p>9 And you understand that we're here today</p> <p>10 in connection with Terri Freeman's lawsuit against</p> <p>11 Johnson & Johnson?</p> <p>12 A Yes, ma'am.</p> <p>13 Q And Doctor, I know you've been deposed</p> <p>14 before and you understand the rules. So I'll just</p> <p>15 ask you that we try not to interrupt each other as</p> <p>16 much as possible so the court reporter can get a</p> <p>17 clean record. Okay?</p> <p>18 A Sure.</p> <p>19 Q Okay. And we've marked as Exhibit 1 your</p> <p>20 Notice of Deposition, and I know you've brought</p> <p>21 several materials with you today that we'll, kind</p> <p>22 of, walk through during the course of the</p> <p>23 description.</p> <p>24 And Dr. Bercik, you've been retained as</p>	<p style="text-align: right;">Page 9</p> <p>1 A Well, I thought I could. Hold on. I'm</p> <p>2 sorry about that.</p> <p>3 I believe it was August -- either</p> <p>4 August 15th or August 16th, 2019.</p> <p>5 Q All right. Great. And what did you do</p> <p>6 to prepare your report, Dr. Bercik?</p> <p>7 A I reviewed the items on the reliance</p> <p>8 list. I think I have that there for you in Exhibit</p> <p>9 3. The medical records.</p> <p>10 I also, from that, use my experience and</p> <p>11 my knowledge of the literature and the literature</p> <p>12 that I've used and -- some of which is I revised --</p> <p>13 on that reliance list to form my opinions.</p> <p>14 Q And we marked your report as Exhibit 2</p> <p>15 and then, your -- your updated report, I believe you</p> <p>16 had some corrections to it or an addendum as Exhibit</p> <p>17 9.</p> <p>18 And other than typographical errors,</p> <p>19 Doctor, are there any substantive corrections that</p> <p>20 you've made to your report?</p> <p>21 A I -- I think I added one -- just a -- I</p> <p>22 wouldn't call it substantive. It was just adding a</p> <p>23 word on page 13 --</p> <p>24 Q Okay.</p>

<p style="text-align: right;">Page 10</p> <p>1 A -- paragraph 7.</p> <p>2 This is in the office visit of 7/9/18 --</p> <p>3 Q Uh-huh.</p> <p>4 A -- the -- the first line. It reads,</p> <p>5 "Since last visit, she saw OB-GYN Dr. Grisales who</p> <p>6 also..." And after the word "also" should be</p> <p>7 inserted the word "recommended."</p> <p>8 Q Okay. Got it. Anything else --</p> <p>9 A Page 9.</p> <p>10 Q -- of a non-typographical-typographical</p> <p>11 nature? Uh-huh?</p> <p>12 A The third paragraph on the third line</p> <p>13 toward the end of that sentence, it says, "The" --</p> <p>14 and this is written as "The bas-fond and</p> <p>15 trigone..."</p> <p>16 And that phrase of "bas-fond" should</p> <p>17 simply say "base," b-a-s-e. So that sentence should</p> <p>18 read, "The base and trigone were normal."</p> <p>19 Q Okay. Anything else?</p> <p>20 A I think that's it for -- for</p> <p>21 corrections.</p> <p>22 Q Okay. And Doctor, is there anything that</p> <p>23 you would have liked to do or review to prepare your</p> <p>24 report that you were not able to do or review?</p>	<p style="text-align: right;">Page 12</p> <p>1 A I have not.</p> <p>2 Q And prior to being retained as an</p> <p>3 expert, Dr. Bercik, did you serve as one of</p> <p>4 Ms. Freeman's treating physicians?</p> <p>5 A No.</p> <p>6 Q And in between being retained as an</p> <p>7 expert and submitting your report, did you ever</p> <p>8 perform an independent medical examination on</p> <p>9 Ms. Freeman?</p> <p>10 A I have not.</p> <p>11 Q Have you performed an independent medical</p> <p>12 examination on Ms. Freeman since submitting your</p> <p>13 report?</p> <p>14 A No, I have not.</p> <p>15 Q And as we sit here today, do you have any</p> <p>16 plans to perform an independent medical examination</p> <p>17 on Ms. Freeman in the future?</p> <p>18 A Not to my knowledge.</p> <p>19 Q And, Doctor, you've mentioned that you've</p> <p>20 reviewed medical records.</p> <p>21 Have you spoken with any of Ms. Freeman's</p> <p>22 doctors regarding her treatment?</p> <p>23 A No, ma'am.</p> <p>24 Q Have you ever met with or spoken with</p>
<p style="text-align: right;">Page 11</p> <p>1 A No. At the time that I repaired --</p> <p>2 pre- -- prepared the report -- excuse me -- I don't</p> <p>3 think depositions had been done. So they were not</p> <p>4 part of the -- this.</p> <p>5 I got -- you know, when -- when they --</p> <p>6 when I get those, I will review them. But I have</p> <p>7 not. That's the only thing I could think of.</p> <p>8 Q And so, Doctor, you mentioned that to</p> <p>9 date, you have not reviewed any depositions in this</p> <p>10 case. Is that correct?</p> <p>11 A That is correct. No.</p> <p>12 Q And -- so that would include</p> <p>13 Ms. Freeman's deposition and Dr. Easter's deposition</p> <p>14 testimony? You've not reviewed those?</p> <p>15 A That is correct. I haven't seen any</p> <p>16 depositions -- haven't reviewed any depositions in</p> <p>17 this case.</p> <p>18 Q Were you aware, Doctor, that Dr. Daniel</p> <p>19 Elliott is also serving as expert for plaintiffs in</p> <p>20 this case?</p> <p>21 A I became aware of that yesterday, I</p> <p>22 think.</p> <p>23 Q Have you report -- have you reviewed</p> <p>24 Dr. Elliott's report or his deposition testimony?</p>	<p style="text-align: right;">Page 13</p> <p>1 Ms. Freeman?</p> <p>2 A I have not.</p> <p>3 Q It'd be easier today, Doctor, to offer</p> <p>4 your opinion on her medical condition. Correct?</p> <p>5 A Correct.</p> <p>6 Q And, Doctor, you're being paid for your</p> <p>7 work as an expert in this case. Is that correct?</p> <p>8 A Yes, ma'am.</p> <p>9 Q And how many hours have you spent on this</p> <p>10 case so far?</p> <p>11 A I don't know exactly. But at this --</p> <p>12 somewhere in the range of 20 to 25.</p> <p>13 Q And I have your fee schedule. I believe</p> <p>14 you charge \$4,000 as the initial retainer. Is that</p> <p>15 right?</p> <p>16 A Yes, ma'am.</p> <p>17 Q And we marked as Exhibit 8 the check from</p> <p>18 plaintiff's counsel for \$4,000. Is that for your</p> <p>19 initial retainer?</p> <p>20 A Yes.</p> <p>21 Q And your schedule says that's for up to</p> <p>22 five hours and your initial verbal report. Is that</p> <p>23 right?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q And what do you mean by "initial verbal 2 report"?</p> <p>3 A So that's in cases where somebody may be 4 asking me to simply review records and to tell them 5 if I think that -- that there is a reasonable action 6 based on what I've looked at.</p> <p>7 That doesn't pertain to this case where I 8 was asked from the beginning to write a written 9 report.</p> <p>10 Q Understood.</p> <p>11 And so -- and then, for each additional 12 hour beyond the five hours, you charge \$800 an 13 hour. Is that right?</p> <p>14 A That is correct.</p> <p>15 Q So you said 20 to 25 hours. And now, 16 I'll do some math here.</p> <p>17 So it was 4,000 for the first five 18 hours, and then, 800 for, let's say, an additional 19 15 hours. So that's about 16,000 or so total?</p> <p>20 A Yeah. That sounds about right.</p> <p>21 Q And then, you're also being paid for your 22 time at this deposition. Right?</p> <p>23 A Yes.</p> <p>24 Q And that's separate from the payment that</p>	<p style="text-align: right;">Page 16</p> <p>1 And is that an up-to-date list of your 2 prior testimony, Dr. Bercik?</p> <p>3 A I believe so.</p> <p>4 Q Okay. And --</p> <p>5 A The last --</p> <p>6 Q -- and, Doctor --</p> <p>7 A -- date -- the --</p> <p>8 Q -- you have --</p> <p>9 A -- last day --</p> <p>10 Q -- your --</p> <p>11 A -- the last date is June of this -- the 12 last date is June of this year. And I don't -- I 13 don't think I've done any -- anything since then. 14 So -- yeah.</p> <p>15 Q All right.</p> <p>16 A This looks --</p> <p>17 Q And, Doctor --</p> <p>18 A -- this looks --</p> <p>19 Q -- this -- this --</p> <p>20 A -- up-to-date.</p> <p>21 Q Okay. Great.</p> <p>22 And you have served as an expert for 23 plaintiffs in four other pelvic mesh cases against 24 Ethicon. Is that right?</p>
<p style="text-align: right;">Page 15</p> <p>1 we just discussed?</p> <p>2 A Yes, ma'am.</p> <p>3 Q And, Doctor, you'll be paid, let's see, 4 \$4,000 for today's deposition?</p> <p>5 A That's correct.</p> <p>6 Q And if this case proceeds to trial, how 7 much will you be paid for your testimony at trial?</p> <p>8 A Well, basically, it's the same. Whether 9 the testimony is deposition or trial, the fee is the 10 same.</p> <p>11 And it's really just based upon how 12 many -- how much time is taken away from my 13 practice. So I can't predict. But generally, it's 14 at least a day.</p> <p>15 Q And it's -- and you charge \$8,000 for a 16 full day?</p> <p>17 A Yes, ma'am.</p> <p>18 Q And 4,000 for a half day?</p> <p>19 A That's correct.</p> <p>20 Q And we have Exhibit 3, which is your 21 reliance list that we discussed and your prior 22 testimony list?</p> <p>23 A Yes. I have that.</p> <p>24 Q And, Doctor, is that -- okay. Great.</p>	<p style="text-align: right;">Page 17</p> <p>1 A Hon- -- honestly, I don't know exactly 2 how many other were Ethicon cases or not. I 3 haven't -- I haven't added them up.</p> <p>4 Q Sure.</p> <p>5 I was just looking at this list, and I 6 saw Blockus, Hrymoc, Lemay, and Farrell. You were a 7 plaintiff's expert in those four cases. Is that 8 right?</p> <p>9 A Could -- I'm sorry. Could you repeat 10 them? It -- there was -- it garbled a little bit 11 there.</p> <p>12 Q Oh, sure.</p> <p>13 On the second page, we have Blockus v. 14 Ethicon, Hrymoc v. Ethicon, and Lemay v. Johnson & 15 Johnson, where you were an expert for the 16 plaintiffs?</p> <p>17 A Yes. That is correct.</p> <p>18 Q And then, on the -- and then, on the 19 third page at the top there, there's also Farrell 20 v. Johnson & Johnson.</p> <p>21 Were you an expert for the plaintiff?</p> <p>22 A Yes, I was.</p> <p>23 Q And I can represent to you that although 24 they say "Johnson & Johnson," they were also against</p>

<p style="text-align: right;">Page 18</p> <p>1 Ethicon.</p> <p>2 And so those were the four cases that I</p> <p>3 mentioned where you were a plaintiff expert in cases</p> <p>4 against Ethicon?</p> <p>5 A Correct. Thanks for clarifying that.</p> <p>6 Q And, Doctor -- sure.</p> <p>7 And, Doctor, it looks like you've also</p> <p>8 served as an expert for plaintiff in, let's say,</p> <p>9 roughly 20 cases against Boston Scientific and</p> <p>10 Bard. Does that sound about right?</p> <p>11 A Again, I haven't added them up. But I</p> <p>12 guess, that -- that sounds about right.</p> <p>13 Q Now, have you ever served as an expert on</p> <p>14 behalf of defendants in a case involving a pelvic</p> <p>15 mesh device?</p> <p>16 A No. I've never been approached by any of</p> <p>17 the firms to act in that regard.</p> <p>18 Q And the cases involving Boston Scientific</p> <p>19 and Bard, did those cases involve pelvic mesh</p> <p>20 devices used for stress incontinence or pelvic organ</p> <p>21 prolapse?</p> <p>22 A Yes, they did.</p> <p>23 Q And, Doctor, have you ever declined to</p> <p>24 testify on behalf of plaintiffs in a case involving</p>	<p style="text-align: right;">Page 20</p> <p>1 your patients?</p> <p>2 A Correct.</p> <p>3 Q And then, just turning to your reliance</p> <p>4 list, Doctor -- we talked about this a little bit</p> <p>5 earlier.</p> <p>6 But I just wanted to ask you whether</p> <p>7 you've reviewed Ms. Freeman's complaint in this</p> <p>8 case.</p> <p>9 A Is that the form that is called the PFS?</p> <p>10 Q No. It's a little different. It would</p> <p>11 be just called the "Short Form Complaint."</p> <p>12 A I don't recall -- I -- I think I -- I did</p> <p>13 review something called the "PFS."</p> <p>14 Q Okay.</p> <p>15 A I -- I guess that's the Plaintiff Fact</p> <p>16 Sheet. I just brought that up. The plaintiff's</p> <p>17 second amended Plaintiff Fact Sheet.</p> <p>18 I did re- -- review that. I did not</p> <p>19 review a complaint that I recall or that I have on</p> <p>20 my list.</p> <p>21 Q And have you reviewed the reports of any</p> <p>22 of defendants' experts?</p> <p>23 A I have not.</p> <p>24 Q And then, Doctor, your reliance list at</p>
<p style="text-align: right;">Page 19</p> <p>1 pelvic mesh?</p> <p>2 A Certainly.</p> <p>3 And I think I've -- I've -- this has</p> <p>4 come up in prior depositions. I have a -- there's</p> <p>5 cases I reviewed which I did decline to act as an</p> <p>6 expert.</p> <p>7 Q And why did you decline to act as an</p> <p>8 expert in certain cases?</p> <p>9 A Generally, because I thought the</p> <p>10 evidence was not present to make a decision that</p> <p>11 the injuries that the plaintiffs had were due to</p> <p>12 the mesh product, or because the -- it was my</p> <p>13 opinion that they did not have significant</p> <p>14 injuries.</p> <p>15 Q And as far as you can remember, Doctor,</p> <p>16 have you ever declined to act as a plaintiff's</p> <p>17 expert in a case against Ethicon?</p> <p>18 A I don't offhand recall.</p> <p>19 Q And you have also testified, Doctor, in</p> <p>20 prior Ethicon cases as the implanting physician. Is</p> <p>21 that correct?</p> <p>22 A I have.</p> <p>23 Q Meaning, cases where -- where you,</p> <p>24 yourself, have implanted an Ethicon mesh device in</p>	<p style="text-align: right;">Page 21</p> <p>1 the end references, let's see, one, two, three,</p> <p>2 four, five, six internal Ethicon company documents</p> <p>3 that you reviewed. Correct?</p> <p>4 A Yes.</p> <p>5 Q And did you receive those documents from</p> <p>6 plaintiff's counsel?</p> <p>7 A No, I did not.</p> <p>8 I think these are documents I had from</p> <p>9 prior cases in -- that I've been involved with.</p> <p>10 Q And in the prior cases, did you receive</p> <p>11 the documents from plaintiff's counsel in those</p> <p>12 cases?</p> <p>13 A Some of them, I sure -- I'm -- I'm sure I</p> <p>14 did. But I'm not sure they all came from that --</p> <p>15 that source.</p> <p>16 Q Okay. We can put Exhibit 3 aside.</p> <p>17 Doctor, before we discuss Ms. Freeman's</p> <p>18 medical history, I'd just like to set the stage.</p> <p>19 Ms. Freeman was implanted with the TVT-O</p> <p>20 and the Prolift+M anterior and posterior April 8th,</p> <p>21 2010, by Dr. Thomas Easter in Upland, California.</p> <p>22 Correct?</p> <p>23 A April 8th or April 9th. I -- I have it</p> <p>24 as April 9th. Maybe I have that date incorrect.</p>

<p style="text-align: right;">Page 22</p> <p>1 But it -- you're right. It was that --</p> <p>2 that April date in 2010.</p> <p>3 Q Okay. And then, she had a couple</p> <p>4 different surgeries to remove the mesh. Correct?</p> <p>5 A Well, "a couple" means two. I think she</p> <p>6 actually had four or five.</p> <p>7 Q Fair enough.</p> <p>8 She have had multiple surgeries to remove</p> <p>9 the mesh. Correct?</p> <p>10 A Yes.</p> <p>11 Q And to your knowledge, Doctor, does</p> <p>12 Ms. Freeman have any mesh still inside her body?</p> <p>13 A To my knowledge, she does.</p> <p>14 Q And is that the Prolift+M mesh or the</p> <p>15 TVT-O mesh?</p> <p>16 A Well, I think that it's possible that she</p> <p>17 still has some of both of those meshes in --</p> <p>18 portions of the TVT-O and portions of the Prolift.</p> <p>19 Q And, Doctor, your report mentions that</p> <p>20 you are licensed to practice medicine in New York,</p> <p>21 New Jersey, Florida, and Connecticut.</p> <p>22 Are you also licensed to practice</p> <p>23 medicine in California?</p> <p>24 A I am.</p>	<p style="text-align: right;">Page 24</p> <p>1 The procedure is actually exactly the same, except</p> <p>2 for the mesh that's used. I have not -- I have not</p> <p>3 performed the TVT-O, that I recall, in a patient.</p> <p>4 Q Sure. And I just meant -- sure. And I</p> <p>5 just meant, then, that is it fair to say that you've</p> <p>6 never performed a surgery with TVT-O and Prolift+M</p> <p>7 at the same time?</p> <p>8 A I have not.</p> <p>9 Q Okay. And then, Doctor, you should have</p> <p>10 in front of you Exhibits 4, 5 and 6, which are</p> <p>11 Ms. Freeman's deposition with exhibits, Dr. Easter's</p> <p>12 deposition with exhibits, and Dr. Elliott's</p> <p>13 deposition with exhibits, because I may be referring</p> <p>14 to them from time to time.</p> <p>15 You have those in front of you?</p> <p>16 A I do.</p> <p>17 Q Okay. And, Doctor, I just want to turn</p> <p>18 to Ms. Freeman's medical history before the mesh</p> <p>19 implant in 2010.</p> <p>20 Ms. Freeman was born in 1952. Correct?</p> <p>21 A Yes.</p> <p>22 Q And she had the history of two vaginal</p> <p>23 births in 1974 and 1976. Correct?</p> <p>24 A I don't have that in front of me. I will</p>
<p style="text-align: right;">Page 23</p> <p>1 Q And have you previously implanted T- --</p> <p>2 the TVT-O device in your patients?</p> <p>3 A You know, I may have tried it once.</p> <p>4 I -- I can't definitively say I have. I don't</p> <p>5 recall if I tried it in a laboratory, or if I</p> <p>6 actually tried it in an operating room.</p> <p>7 But I've never -- to my knowledge, I</p> <p>8 don't think I've implanted it in a patient.</p> <p>9 Q Have you ever implanted the Prolift+M</p> <p>10 device?</p> <p>11 A I have.</p> <p>12 Oh, I'm sorry. No. I have not. I've</p> <p>13 implanted the Prolift, but not the Prolift+M.</p> <p>14 Q Okay. So is it fair to say, Doctor,</p> <p>15 then, since Ms. Freeman had the TVT-O and the</p> <p>16 Prolift+M, that you've performed the exact surgery</p> <p>17 that Ms. Freeman had?</p> <p>18 A Well, actually, the Prolift+M is the</p> <p>19 exact surgery. It's just a different mesh. But all</p> <p>20 the procedures are the same as the Prolift. I have</p> <p>21 not done --</p> <p>22 Q As the Prolift?</p> <p>23 A Correct.</p> <p>24 The only difference is the mesh use.</p>	<p style="text-align: right;">Page 25</p> <p>1 assume that you have those dates correct. But she</p> <p>2 did have two vaginal deliveries.</p> <p>3 Q And then, are you aware that she had a</p> <p>4 total abdominal hysterectomy in 1976?</p> <p>5 And -- and I'll represent to you,</p> <p>6 Doctor, your report says "1979." But Ms. Freeman</p> <p>7 testified that she was 24. And that's how I came up</p> <p>8 with 1976, because we don't actually have the</p> <p>9 records.</p> <p>10 A Correct. And I got -- the "1979," I --</p> <p>11 I -- I had gotten from one of her medical records.</p> <p>12 But yeah, she had an abdominal hysterectomy and</p> <p>13 removal of her tubes and ovaries somewhere between</p> <p>14 1976 and 1979.</p> <p>15 Q Fair enough.</p> <p>16 And would you with agree, Doctor, that</p> <p>17 there's a risk of pelvic pain with a hysterectomy?</p> <p>18 A There is. There was nothing in her</p> <p>19 records that said that she -- showed that she had</p> <p>20 pelvic pain from 1979 to prior to the implantation</p> <p>21 of the Prolift. But there's a risk for it. Yes.</p> <p>22 Q And there's also a risk of pain with</p> <p>23 intercourse with a hysterectomy?</p> <p>24 A My answer would be the same. It is --</p>

<p style="text-align: right;">Page 26</p> <p>1 there is a risk. I didn't see any evidence in her 2 records that she had it after the hysterectomy was 3 performed or reference to it prior to the 4 implantation of the devices we were discussing. 5 Q Can pelvic pain or pain with intercourse 6 that results from a hysterectomy start to manifest 7 itself years after the hysterectomy? 8 A That's not my experience. My experience 9 is that when it occurs from those procedures, it is 10 caused -- occurs soon thereafter. So generally, if 11 there's -- it occurs years later. 12 To a degree of medical probability, it is 13 more likely from a new onset condition and not 14 from -- from the surgery that was a 20 years, 30 15 years prior. 16 Q Are you aware of any medical literature 17 that shows that there can be chronic pain after 18 a -- a hysterectomy -- chronic pelvic pain? 19 A I'm aware of medical literature that 20 talks about chronic pelvic pain after hysterectomy. 21 And I would say that the percentage of 22 those patients is far vastly that it occurs soon 23 after the procedure and not years later without some 24 other intervening factor.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q And you're free to take a moment to 2 review the next page, Doctor. 3 Ms. Freeman testified she had a 4 hysterectomy due to severe cramping in her pelvic 5 area and heavy blood flow and varicose veins on her 6 uterus. Do you see that? 7 A Just give me a moment. 8 Q Yeah. 9 A Yes, I do. 10 Q Are varicose veins in the pelvic area 11 otherwise known as "pelvic congestion syndrome"? 12 A No. Not necessarily. Patients have 13 varicose veins -- 14 Q What's the difference? 15 A Well, the difference is that pelvic 16 congestion syndrome can occur without varicose 17 veins, and varicose veins can occur without pelvic 18 congestion syndrome. So they're not necessarily the 19 same. You can have the two together. 20 But pelvic congestion syndrome -- 21 Q Okay. 22 A -- does not necessarily have -- there's 23 not necessarily varicosities present. And we see 24 many, many patients who have varicosities who have</p>
<p style="text-align: right;">Page 27</p> <p>1 Q And, Doctor, in 1976, or -- or let's 2 say, even 1979, Ms. Freeman would have been around 3 24 to 27 years old. Right? 4 A Yes. 5 Q In your experience, is 24 to 27 fairly 6 young to be having a hysterectomy? 7 A There are a variety of reasons that 8 patients have hysterectomy. It is on the younger 9 range, certainly. 10 But I certainly have seen patients who 11 have had hysterectomies at that age or younger. 12 Q And if you turn with me, Doctor, to 13 Exhibit 4, Ms. Freeman's deposition -- 14 MR. BARLOW: What page? 15 I'm sorry, Robin. 16 MS. SHAH: Sure. It's page 75 and 17 76 in the -- in the small pages. 18 MR. BARLOW: Okay. 19 A Okay. 20 BY MS. SHAH: 21 Q Do you see at the bottom of page 75 the 22 question, "Why did you have a hysterectomy in 23 1976?" 24 A I do.</p>	<p style="text-align: right;">Page 29</p> <p>1 no pain. 2 Q Can varicose veins on the uterus cause 3 pelvic pain? 4 A It's possible. 5 Q And, Doctor, does your report mention 6 her prior history with varicose veins in her 7 uterus? 8 A It does not. And even now, thinking if 9 she had varicose veins in her uterus 30 years ago, I 10 don't think that has an effect on her pelvic pain 11 she had that was -- after the implantation of the 12 Prolift device -- Prolift+M and TVT-O device. 13 Q But you would agree, Doctor, that, in 14 fact, in evaluating a patient's medical condition, 15 it's helpful to understand their full history? 16 A I agree with that. 17 Q And then, if you turn to page 60 to 61 in 18 Ms. Freeman's deposition -- let me know when you're 19 there. 20 A Okay. 21 Q All right. So Mrs. Freeman also 22 testified that she was diagnosed with 23 endometriosis. Do you see that? 24 A Yeah. I'd just like to read that first.</p>

Page 30

1 Q Sure.

2 A I do see that.

3 Q And she mentions that she believed she

4 was diagnosed around the time she was 23 or 24.

5 Correct?

6 A That's what she says, probably.

7 Q Right.

8 And does your report, Doctor, discuss

9 Ms. Freeman's endometriosis diagnosis?

10 A No, it does not.

11 Q And did you consider her diagnosis of

12 prior endometriosis when preparing your opinions in

13 this case?

14 A No, I didn't. And at this point,

15 knowing this diagnosis, it doesn't change my

16 opinion.

17 Q And so, Doctor, after Ms. Freeman had her

18 hysterectomy, would you say she -- she would,

19 essentially, experience menopause?

20 A I can't really answer that based on just

21 getting a chance to look at one or two pages of this

22 without looking at the medical records.

23 It's possible. But I can't give a

24 probability of whether she did or didn't.

Page 31

1 Q And do you recall reviewing in her

2 medical records that she was having symptoms of

3 menopause?

4 A Yes. At the point that -- when she was

5 seen by Dr. Easter, yes.

6 Q Okay. And then, Doctor, I believe you

7 did note in your report Ms. Freeman had to have a

8 cardiac ablation in 2006 because of her heart

9 arrhythmia. Is that right?

10 A Yes. And again, that was based on what

11 was in the -- in the medical records I reviewed.

12 Q And then, if you take a look, Doctor, at

13 Dr. Elliott's deposition -- so that would be

14 Exhibit 6 -- and I'd like you to flip to Exhibit 4

15 of Dr. Elliott's deposition. It's sort of towards

16 the back. There's not a great way for me to tell

17 you, but the exhibits have exhibit stickers on

18 them.

19 So just let me know when you find it.

20 A Okay.

21 MR. BARLOW: What is Exhibit 4?

22 I mean --

23 MS. SHAH: It's a compilation of

24 medical records.

Page 32

1 MR. BARLOW: Okay.

2 A Okay. I have the page with the sticker.

3 BY MS. SHAH:

4 Q Perfect.

5 And, Doctor, this is more just to refresh

6 your recollection, because I know that there are a

7 lot of records, 'cause I'm going to be asking about

8 some of the things in these records.

9 So the first one we have is Dr. Jenkins'

10 visit with Ms. Freeman from July 14th, 2009.

11 Would you agree with me, Doctor, that

12 Mrs. Freeman had a history of diarrhea prior to her

13 implant surgery in 2010?

14 MR. BARLOW: Object to form.

15 A Yes.

16 BY MS. SHAH:

17 Q And then, if I stick with that record or

18 look at the record after it, Dr. Bercik, Ms. Freeman

19 was also diagnosed with colitis and gastroenteritis

20 in 2009. Is that correct?

21 A That is correct.

22 Q And I realize this is not a your area of

23 expertise.

24 But can you tell us what colitis and

Page 33

1 gastroenteritis are?

2 A They're basically conditions of the --

3 well, gastroenteri- -- they're very -- very general

4 con- -- terms.

5 Gastroenteritis means an inflammation of

6 the stomach and intestines. And colitis refers to,

7 generally, an inflammation of the colon.

8 Q Is it fair to say that both

9 gastroenteritis and colitis could cause abdominal

10 pain?

11 A They can cause abdominal pain. They

12 generally do not cause pelvic pain. And they

13 certainly don't cause dyspareunia. But abdominal

14 pain, they can cause.

15 Q Thank you. And I'll respectfully move to

16 strike the nonresponsive portion.

17 And then, her doctors also found several

18 diverticula in her colon. Is that correct?

19 A That is correct.

20 Q Now, what exactly is diverticulosis?

21 A So diverticulosis is simply the presence

22 of diverticula in the large intestine, which are

23 present probably in about 50 to 60 percent of women

24 over 50.

<p style="text-align: right;">Page 34</p> <p>1 They're not the -- it -- it is not 2 this -- an inflammatory condition. It's just the 3 presence of the diverticula. 4 Q And in that second record, Doctor, from 5 July 23rd, 2009, from -- 6 A Which one? 7 Q -- Ms. Freeman's visit with Dr. Hahn -- 8 A One moment. 9 Q -- he notes -- 10 A One moment. 11 Q -- a clinical -- 12 A One moment. 13 Q -- history of -- I'm sorry? 14 A One moment. 15 Q Oh, sure. 16 A July 29, did you say? I'm sorry. 17 Q July 23rd -- 18 A Oh, yup. 19 Q -- 2009. It's the second page of the 20 exhibit. 21 A I see it. July 22nd. Yes. 22 Q In that record, Dr. Hahn notes a clinical 23 history of abdominal pain. Correct? 24 MR. BARLOW: Object to form.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q -- looking -- 2 A -- probably Bates number Freeman 3 MDR00007. It's cut off a little bit at the bottom, 4 but that's what it looks like. 5 Q I'm looking at the page before that. 6 A Okay. 7 Q And this is the one -- 8 A So if -- 9 Q -- signed by -- 10 A -- the document -- 11 Q -- Dr. Hahn on July 23rd. Do you see 12 that? 13 A Right. So I -- I'm just going -- 14 Q Okay. 15 A -- to start from where the sticker is. 16 The first page is 7/14. The second page looks like 17 from something from San Antonio Community Hospital. 18 The third page is then, I believe, the 19 encounter we're talking about -- July 22nd -- signed 20 on July 23rd, 2009. Is that -- do I have that 21 right? 22 Q I'm actually looking at the second -- I'm 23 looking at the second page -- the one from San 24 Antonio Hospital.</p>
<p style="text-align: right;">Page 35</p> <p>1 A Yes. Abdominal pain along with the 2 nausea and the vomiting and the diarrhea you 3 mentioned. 4 BY MS. SHAH: 5 Q And I just want to make sure we're 6 looking at the same thing, Doctor. I think we 7 might -- we might be reading different things. 8 Because I'm looking at the record that 9 says "July 23rd, 2009" -- 10 A Well, the -- 11 Q -- towards the top. It's the second page 12 of Exhibit 4. 13 A Yeah. The -- the record I'm looking at 14 says -- 15 Q It's -- 16 A -- the encounter date is July 22nd. The 17 encounter was closed July 23rd, which was the date 18 it was signed. But the encounter was July 22nd 19 based on this. 20 This is a record -- 21 Q And is -- 22 A -- it looks -- 23 Q -- where you're -- 24 A -- like it's --</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. BARLOW: With "VERIFIED 2 RADIOLOGY RESULTS" in the upper 3 right-hand corner? 4 MS. SHAH: Yes. That's the one. 5 A Okay. So you're looking at the X-ray 6 re- -- the -- 7 BY MS. SHAH: 8 Q And I'm just looking -- yes. Well, 9 I'm -- I'm just looking at the clinical history 10 section. But I got the sense that you may be 11 reading something different than I was reading. 12 But just so we have a clean record now 13 that we've gotten through all that, just, would you 14 agree with me, Doctor, that Dr. Hahn notes a 15 clinical history of abdominal pain and colitis and 16 Crohn's disease? 17 MR. BARLOW: Object -- object to 18 form. 19 A Yes. 20 BY MS. SHAH: 21 Q And what is Crohn's disease? 22 A Again, Crohn's disease is an inflammatory 23 condition of the intestine. 24 Q And, Doctor, the inflammation from</p>

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1 Crohn's disease, can that lead to abdominal pain?

2 A It can.

3 Q And then, if you flip with me now to the

4 fourth page, the visit from August 6th, 2009 --

5 A Yes.

6 Q -- Ms. Freeman is also diagnosed with

7 irritable bowel syndrome. Correct?

8 A Yes.

9 Q And what is irritable bowel syndrome?

10 A It's the condition where patients have,

11 usually, some cramping, diarrhea with or without

12 constipation or sometimes constipation.

13 That's why it's called a syndrome and not

14 a disease. It's just, basically, a -- a -- a

15 constellation of symptoms.

16 Q And, Doctor, just taking the conditions

17 we just walked through in Dr. Elliott's Exhibit

18 4 -- so Ms. Freeman's history of diarrhea, colitis

19 gastroenteritis, diverticulosis, abdominal pain,

20 Crohn's disease, and irritable bowel syndrome, does

21 your report discuss her history with any of those

22 conditions?

23 MR. BARLOW: Object to form.

24 A Well, my report discusses those

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1 conditions as not being a reason for her to have an

2 increased dyspareunia. That's in my report.

3 BY MS. SHAH:

4 Q And I believe your report, Doctor, also

5 indicates that you believe that the mesh caused her

6 abdominal pain. Is that correct?

7 A I do think it caused some of her

8 abdominal -- her abdominal pain. Yes.

9 Q And did you consider any of these prior

10 conditions that she had as potential causes of her

11 abdominal pain?

12 A I did. And her abdominal pain that she

13 described after the mesh implant was not consistent

14 with these conditions.

15 Q So, Doctor, you rule -- you ruled out

16 her prior abdominal pain and colitis and

17 gastroenteritis diverticulosis and Crohn's disease

18 and irritable bowel syndrome as causes of her

19 abdominal pain?

20 A Well, again, diverticulosis generally

21 doesn't cause pain -- the presence of the

22 diverticula.

23 The other conditions, all of them, are

24 generally associated -- the pain is associated with

Page 40

1 diarrhea and/or severe constipation.

2 There are multiple evidence in the

3 record of her having abdominal pain without those.

4 So, yes, I -- I considered them and considered them

5 being all on the list as the cause of the abdominal

6 pain, which I was discussing in my report.

7 Q And then, I believe, Doctor, you also

8 noted in your report she -- Ms. Freeman had her

9 gallbladder and her appendix removed prior to her

10 implant surgery in 2010. Correct?

11 A Correct.

12 Q And then, you also note on January 28th

13 2010 --

14 A I'm sorry.

15 Q -- Ms. Freeman --

16 A Could you --

17 Q -- presented --

18 A -- that -- that -- I -- I'm sorry. Could

19 you just repeat that, because --

20 Q I'm sorry?

21 A I wonder if you could repeat --

22 Q Sure.

23 A -- that. It --

24 Q You also --

Page 41

1 A -- garbled for a second. Did they --

2 Q Oh, sure.

3 You also noted that on January 28th,

4 2010, Ms. Freeman presented to Dr. Easter with

5 vaginal prolapse?

6 A Correct.

7 Q And we have that record. If you take a

8 look at Dr. Easter's deposition, it's Exhibit 11 to

9 Dr. Easter's deposition.

10 A You're -- you're talking about Easter's

11 January 28th --

12 Q Exhibit 5 --

13 A -- 2010?

14 Q -- Dr. Easter's deposition.

15 A The January 28 --

16 Q Yes.

17 A -- 2010, note?

18 Q Yes.

19 A Okay. 'cause you're right. Having these

20 all together like this --

21 Q So it's --

22 A -- is very hard to find it.

23 Q Are you with me, Doctor? Do you have

24 that note in front of you?

<p style="text-align: right;">Page 42</p> <p>1 A I'm not.</p> <p>2 Q Okay.</p> <p>3 A Because --</p> <p>4 Q It's -- it's Exhibit 11 to Dr. Easter's</p> <p>5 deposition. It's right before the pictures at the</p> <p>6 end.</p> <p>7 MR. BARLOW: Here, let me see if I</p> <p>8 can find it.</p> <p>9 I got it. Here you go.</p> <p>10 A Okay.</p> <p>11 BY MS. SHAH:</p> <p>12 Q So at this point, Doctor, on</p> <p>13 January 28th, 2010, Ms. Freeman had been</p> <p>14 experiencing vaginal prolapse for three months.</p> <p>15 Correct?</p> <p>16 A Correct.</p> <p>17 Q And what is vaginal prolapse?</p> <p>18 A Well, it's descent of the pelvic organs.</p> <p>19 When we talk about vaginal prolapse, it's --</p> <p>20 generally can be descent of the vagina, allowing</p> <p>21 the bladder and/or rectum to move forward and to</p> <p>22 descend out into the vagina or outside of the</p> <p>23 vagina.</p> <p>24 But it's basically descent of the</p>	<p style="text-align: right;">Page 44</p> <p>1 prolapse?</p> <p>2 A A -- a lot of us don't really consider</p> <p>3 them to be different forms. They're -- they're</p> <p>4 different -- they're different areas that are</p> <p>5 descending that's all the same prolapse, but</p> <p>6 different areas that are descending.</p> <p>7 Q And so Ms. Freeman has three different</p> <p>8 areas that are descending. Right?</p> <p>9 A Correct.</p> <p>10 Q And would you consider Ms. Freeman's case</p> <p>11 to be a severe form of prolapse?</p> <p>12 A Just give me a moment.</p> <p>13 Q Sure.</p> <p>14 A You know, we don't really use the term</p> <p>15 "severe." We don't use the terms the "mild,"</p> <p>16 "moderate," "severe" when we talk about prolapse.</p> <p>17 So that's why -- that's why I'm stopping</p> <p>18 for a moment, because it's not a medical term that</p> <p>19 we use.</p> <p>20 Q Fair enough. And -- and usually, there</p> <p>21 are degrees -- right? -- although I didn't see a</p> <p>22 reference to degrees here.</p> <p>23 A Well, there's -- they -- we can -- we</p> <p>24 talk about degrees or we talk about stages. And I</p>
<p style="text-align: right;">Page 43</p> <p>1 vagina.</p> <p>2 Q And here, Ms. Freeman is describing a</p> <p>3 bulge estimated to be the size of a lemon.</p> <p>4 Correct?</p> <p>5 A Correct.</p> <p>6 Q And would the bulge be considered a</p> <p>7 cystocele?</p> <p>8 A I'd have to look and see what the</p> <p>9 examination was that date, because it can be any</p> <p>10 variety of "-celes," shall we say?</p> <p>11 Q If you look at the bottom of --</p> <p>12 A He got --</p> <p>13 Q -- the second page there, Dr. Easter</p> <p>14 mentioned under his assessment, "cystocele" --</p> <p>15 A And -- and --</p> <p>16 Q -- "rectocele, and enterocele"?</p> <p>17 A Yeah. Right.</p> <p>18 So it is not simply a cystocele.</p> <p>19 It's -- it's all -- it's a cystocele, which is drop</p> <p>20 of the bladder; a rectocele, which allows the rectum</p> <p>21 to drop forward; an enterocele which allowing the</p> <p>22 top of the vagina where the uterus had been to come</p> <p>23 down.</p> <p>24 Q And those are three different forms of</p>	<p style="text-align: right;">Page 45</p> <p>1 didn't see a reference to either one. So</p> <p>2 really even --</p> <p>3 Q So is --</p> <p>4 A -- even knowing --</p> <p>5 Q -- there --</p> <p>6 A -- the -- the size of it being lemon</p> <p>7 size, I would be willing to --</p> <p>8 Q Uh-huh.</p> <p>9 A -- say that most likely, it's stage two</p> <p>10 out of four, at least. But it could be greater.</p> <p>11 And we would not usually use, as I said,</p> <p>12 the terms, like, "severe," "mild," or "moderate."</p> <p>13 Q Do you believe, Doctor, that Ms. Freeman</p> <p>14 was an appropriate candidate for the surgical repair</p> <p>15 for prolapse?</p> <p>16 A Based upon the description in the</p> <p>17 records, she was. Yes.</p> <p>18 Q And do you believe that Dr. Easter was</p> <p>19 within the standard of care to recommend a Prolift+M</p> <p>20 device to treat her prolapse?</p> <p>21 A Well, I think that, you know, there was</p> <p>22 nothing -- and -- and I've answered that. I'm not</p> <p>23 really here to give standard-of-care questions.</p> <p>24 I think he was within -- I think what he</p>

<p style="text-align: right;">Page 46</p> <p>1 did was appropriate. I don't think that he was 2 violating the standard of care by performing either 3 one of those procedures. I think I've mentioned in 4 my report that the procedure was performed within 5 the standard of care, meaning, the procedures were 6 performed properly. 7 Q So is it fair to say you believe, then, 8 that it was appropriate for Dr. Easter to recommend 9 the Prolift+M device to treat her prolapse? 10 A Yes. And I think I've included that in 11 my -- my report. 12 Q And, Doctor, as far as you're aware, did 13 her prolapse come back after the 2010 implant 14 surgery? 15 A Not to my knowledge offhand. I'm just 16 briefly looking at my record. 17 Well, there was a posterior vaginal 18 repair performed by Dr. Siddighi, which would 19 indicate that she had at least a return of that 20 rectocele. 21 Q Did her prolapse come back to the same 22 degree that she had prior to her surgery? 23 A I would have to look into -- well, I 24 mean, first of all, I don't know if we know what</p>	<p style="text-align: right;">Page 48</p> <p>1 the patient. 2 Q Sure. 3 A And at that time -- 4 Q Right. 5 A -- I would not have faulted him for 6 that. 7 Q And why do you say "at that time," you 8 wouldn't have faulted him for it? And I'm assuming 9 you mean in 2010? 10 A Correct. 11 Q And why is it that you're saying in 12 2010, specifically, you would not have faulted him 13 for not recommending a non-mesh surgery? 14 A Because I think that since that time, we 15 had developed -- we have certainly gotten much more 16 knowledge of the success rates and complication 17 rates of different mesh devices. And certainly, if 18 it was today, I would fault him for using that 19 device. 20 Q But back in 2010, you believe that mesh 21 was an appropriate option to treat Ms. Freeman's 22 prolapse? 23 MR. BARLOW: Object to form. 24 A Yes. I said -- and I think I say he was</p>
<p style="text-align: right;">Page 47</p> <p>1 degree she had prior to the surgery, based on the 2 fact that it wasn't given a grade or stage. 3 Q Well, let me ask you this: You mentioned 4 that the rec- -- the posterior vaginal repair would 5 suggest that she may have had a return of the 6 rectocele. 7 Did you see any reference in her records 8 to a return of a cystocele or an enterocele? 9 A Not that I recall. 10 Q Doctor, I was asking you about whether it 11 was appropriate for Dr. Easter to recommend the 12 Prolift+M mesh. 13 Do you fault Dr. Easter for not 14 recommending another mesh device? 15 A You know, the Prolift+M was a device 16 that was available on the market. It was a -- 17 cleared and available on the market. So I don't 18 fault Dr. Easter for not recommending another 19 device. 20 Q Do you fault Dr. Easter for not 21 recommending a non-mesh surgery to treat 22 Ms. Freeman's prolapse? 23 A So I think it's important to take this 24 in the context of when Dr. Easter was caring for</p>	<p style="text-align: right;">Page 49</p> <p>1 not violating the standard of care, and she was an 2 appropriate candidate for that procedure. 3 BY MS. SHAH: 4 Q Do you also believe, Doctor, that 5 Ms. Freeman was an appropriate surgical candidate 6 for treatment of her stress urinary incontinence 7 negligence? 8 A Yes, I do. 9 Q And do you believe that it was 10 appropriate for Dr. Easter to recommend the TVT-O 11 device to treat her stress urinary incontinence? 12 A And I think my answer with regard to the 13 TVT-O was similar to the Prolift+M. It was a device 14 that had been cleared and available. It's -- was 15 not a deviation from the standard of care to use 16 that device at that time. 17 Q And, Doctor, as far as you're aware, did 18 her stress incontinence come back after her 2010 19 surgery? 20 A Well, she certainly did have urinary 21 incontinence after her -- after her sling had come 22 out. I don't recall it being specifically described 23 as "stress incontinence," however. 24 Q Did you see any evidence in the records</p>

<p style="text-align: right;">Page 50</p> <p>1 of her having stress incontinence in between the 2 time that she had the TVT-O implanted and the TVT-O 3 sling taken out? 4 A No. As I recall, I did not see her 5 having stress incontinence during that interval. 6 Q So all else aside, Doctor, would you 7 agree that the TVT-O helped her stress 8 incontinence? 9 A Well, being very specific with regard to 10 just her stress incontinence, it did seem to help 11 that. 12 Q Now, you do o- -- opine, Doctor, that 13 Ms. Freeman has experienced urge incontinence since 14 her implant surgery in 2010. Is that correct? 15 A Yes. 16 Q And to clarify, Doctor, TVT-O is not 17 meant to treat urge incontinence. Correct? 18 A The TVT-O is not for treatment of urge 19 incontinence. 20 Q Right. 21 And Prolift+M mesh is not intended to 22 treat urge incontinence. Correct? 23 A That is correct. 24 Q Do you attribute Ms. Freeman's urge</p>	<p style="text-align: right;">Page 52</p> <p>1 approach. 2 She would also be a candidate for an 3 abdominal approach repair without necessarily using 4 mesh material. 5 Q Any other alternative procedures that you 6 believe she was a candidate for? 7 A Well, I think that, you know, the -- when 8 we talk about abdominal approaches and vaginal 9 approaches, whether it be abdominal being with or 10 without laparoscopy, that pretty much covers all of 11 the surgical procedures that we do. She 12 certainly -- 13 Q And, Doctor, does an anterior -- I'm 14 sorry? 15 A No. Go ahead. 16 Q Doctor, does an anterior and posterior 17 repair without mesh still carry with it a potential 18 risk of pelvic pain? 19 A There's a potential risk. It is 20 significantly lower. And you know, we're talking 21 about pain. 22 My experience, having done thousands of 23 these, is that the risk is significantly lower and 24 not of the severity and permanence that we see with</p>
<p style="text-align: right;">Page 51</p> <p>1 incontinence to the mesh product? 2 A I believe that was one of my opinions. 3 I'm just going to go to that page in my report. 4 Page 23, I reference that and describe 5 why. I -- I do say that her lower urinary tract 6 symptoms, including the urge incontinence and 7 urinary frequency are related to the Prolift+M and 8 the TVT-O. 9 Q You do attribute Ms. Freeman's urge 10 incontinence to the mesh products? 11 A To the mesh products and their subsequent 12 revision procedures that were medically indicated 13 and necessary. 14 Q And then, Doctor, in your report, you 15 also mention that -- that Ms. Freeman was a 16 candidate for alternative procedures for treatment 17 of her prolapse and stress incontinence. 18 What are some of the alternative 19 procedures that you believe she was a candidate 20 for? 21 A Well, based on review, certainly, she 22 was a candidate for a vaginal suspension and 23 anterior and posterior vaginal repair without the 24 use of mesh. That could be done through a vaginal</p>	<p style="text-align: right;">Page 53</p> <p>1 the use of mesh material like the Prolift+M. 2 Q But you agree there is a potential for 3 pelvic pain with an anterior or posterior repair, 4 even without mesh? 5 A There is. 6 Q And is there also a risk of pain with 7 intercourse with an anterior and posterior repair 8 without mesh? 9 A Again, I think my answer would be very 10 similar, in that, yes, there is a risk. But it is 11 significantly -- especially in my experience, the 12 percentages, specifically -- is much lower. 13 And the severity -- you don't see the 14 severity and chronicity that we see with the 15 patients who develop it with a mesh-based product 16 such like the TVT-O and the Prolift+M. 17 Q Is there a risk with the vaginal repair 18 or abdominal repair without mesh? Is -- let me 19 start over. 20 With respect to the vaginal repair or 21 abdominal repair without mesh, is there a risk that 22 those procedures may not cure the prolapse? 23 A That exists -- that -- that -- that 24 exists with any procedure being performed for</p>

<p style="text-align: right;">Page 54</p> <p>1 prolapse, including the mesh-based Prolift+M. 2 Q So you would agree, Doctor, that even 3 surgeries without mesh carry with them a risk of 4 possibly not curing the prolapse? 5 A When you say "not curing," I don't know 6 if you're referring to "lasting forever"? 7 You'll have to define what you mean by 8 "cure." 9 Q Do they carry a risk with -- of not 10 making her prolapse go away? 11 A Again, they carry that risk, and -- and 12 again, you say "not making the prolapse go away." 13 The risk of them having the prolapse occur, when you 14 say "not go away," to me, I interpret that as 15 meaning that they have the surgery and the prolapse 16 is still there, you know, two weeks later, three 17 weeks later. 18 There is a risk for that. It is 19 extremely low. If you mean "never coming back," I'm 20 not sure. Could you -- you have to be a little 21 more, I think, specific -- 22 Q Sure. Sure. 23 A -- in what you're asking me, if you 24 could.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q -- I'm sorry? 2 A I can't cross the street completely free 3 of risk. 4 Q Doctor, turning to Ms. Freeman's actual 5 implant surgery in April, 2010, to your knowledge, 6 did Dr. Easter appropriately place the TVT-O 7 device? 8 A Yes. Based on the description in the 9 operative report, correct. 10 Q And to your knowledge, did Dr. Easter 11 appropriately place the Prolift+M device anteriorly 12 and posteriorly? 13 A Yes. Again, based on the description in 14 the report and the steps that he took, I think I 15 have that in my report that he met the standard of 16 care. So it was appropriate. 17 Q And any complications with the 18 procedure, to your knowledge, after reviewing the 19 records? 20 A Yeah. I don't -- I don't know that I 21 would call it a "complication." She did have some 22 mild inflammation of her incision that was treated 23 locally and, you know, in the office. 24 So I don't -- I don't think there was any</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Sure. 2 Do you -- the abdominal and the vaginal 3 repairs without mesh carry with them a risk of 4 recurrence of the prolapse? 5 A That's correct, as do pretty much every 6 surgery we do for prolapse. 7 Q Because there's no surgery that you can 8 perform for prolapse that's completely risk-free. 9 Right? 10 A I -- I don't know if you're asking me the 11 same question or a different question. 12 You're saying risk-free? 13 Q Sure. 14 I'm just asking generally. Is there any 15 surgery you can perform to treat prolapse or 16 incontinence that is completely free of risk? 17 A No. There's no surgery that you can 18 perform anywhere for anything that's completely free 19 of risk. 20 Q Fair enough. 21 A I can't cross the street completely 22 free -- 23 Q And, Doctor -- 24 A -- of risk.</p>	<p style="text-align: right;">Page 57</p> <p>1 complication that I saw during the procedure or in 2 the postoperative period. 3 Q And the issue with her incision was 4 immediately after the surgery. Is that right? 5 A I'm sorry. Could you say that again? 6 Q The issue you mentioned with her 7 incision, that happened immediately after her 8 surgery? 9 MR. BARLOW: Object to form. 10 BY MS. SHAH: 11 Q Is that right? 12 A Well, I'm not sure what you mean by 13 "immediately." I mean, it wasn't -- she had the 14 surgery on the 9th, and I think she was seen two 15 weeks later and had a normal exam. 16 Maybe three weeks later, she had some 17 mild inflammation of the incision. I don't know 18 if -- do you mean that -- if that -- I don't know if 19 you consider that "immediate" or not. I'm not 20 sure. 21 Q Fair enough. 22 But she was treated for pain at the 23 incision site a few weeks after her surgery? 24 A Yes, ma'am.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q But other than that, you didn't note any</p> <p>2 complications with the procedure?</p> <p>3 A Correct.</p> <p>4 Q And then, Doctor, according to your</p> <p>5 report, you believe that the TVT-O and Prolift+M</p> <p>6 mesh caused Ms. Freeman's vaginal pain and</p> <p>7 dyspareunia, vaginal contraction and anatomic</p> <p>8 distortion of the vagina, hypertonic pelvis floor</p> <p>9 disorder/abdominal pain, voiding dysfunction, and</p> <p>10 urinary frequency/urge incontinence/lower urinary</p> <p>11 tract symptoms.</p> <p>12 Is there anything I missed in terms of</p> <p>13 injuries that you believe Ms. Freeman suffered as a</p> <p>14 result of the TVT-O and Prolift plus mesh --</p> <p>15 A I don't believe so.</p> <p>16 Q Prolift -- Prolift+M mesh?</p> <p>17 A And basically, I think you just went</p> <p>18 through the injuries that I listed on my report, and</p> <p>19 I don't have any to add to that.</p> <p>20 Q And, Doctor, when you say that the TVT-O</p> <p>21 and the Prolift+M mesh caused her injuries, do you</p> <p>22 believe that they both caused all of the injuries?</p> <p>23 Or do you believe that one of the products caused</p> <p>24 some of the injuries and the other product caused</p>	<p style="text-align: right;">Page 60</p> <p>1 multiple pro- -- procedures that had been done as we</p> <p>2 re- -- we'll call them "revision procedures," I</p> <p>3 guess -- and the effects that they have on the -- on</p> <p>4 the bladder.</p> <p>5 With regard to urinary frequency and</p> <p>6 lower urinary tract symptoms, I think a -- a lot of</p> <p>7 that was related to the TVT-O. But again, each of</p> <p>8 those procedures -- revision procedures, I should</p> <p>9 specifi- -- specify, carry a risk of causing urge</p> <p>10 incontinence and lower urinary tract symptoms.</p> <p>11 So I think pretty much all of them,</p> <p>12 except -- well, the urinary retention that was</p> <p>13 relieved by the release of the -- the removal of</p> <p>14 the sling was more the sling. But the voiding</p> <p>15 disorder that persisted after that was -- is really</p> <p>16 both.</p> <p>17 I don't know if I answered that</p> <p>18 question. It was probably a little bit confusing.</p> <p>19 I'm sorry.</p> <p>20 Q No. That was helpful.</p> <p>21 So I take it that, for the most part, you</p> <p>22 believe that both contributed to the injuries with</p> <p>23 the exception of urinary retention, which you</p> <p>24 believe was caused by the TVT-O. Is that a fair</p>
<p style="text-align: right;">Page 59</p> <p>1 other injuries?</p> <p>2 A So I think that the -- it might be</p> <p>3 easiest for me to answer that question by briefly</p> <p>4 just, kind of, going through each of the injuries</p> <p>5 and -- and telling you what I think of -- just, in</p> <p>6 terms of percentage -- contribution -- not</p> <p>7 percentage of contribution, but contribution. I'll</p> <p>8 do it that way maybe.</p> <p>9 So I think that the pel- -- pelvic pain</p> <p>10 and -- and dyspareunia can be caused by both of the</p> <p>11 devices. I think that the --</p> <p>12 Q Okay.</p> <p>13 A -- vaginal contraction and anatomic</p> <p>14 distortion is more caused by the Prolift+M. The</p> <p>15 hypertonic pelvic floor disorder, I have both</p> <p>16 devices contributing -- can contribute to that.</p> <p>17 Urinary retention and long-term voiding</p> <p>18 disorder, more the TVT-O, only because when that was</p> <p>19 removed, those symptoms improved. However, as I put</p> <p>20 in the record, the voiding disorder that she has and</p> <p>21 per- -- persists, even after the sling has been</p> <p>22 removed, is part and parcel also due to the multiple</p> <p>23 procedures she had.</p> <p>24 Not just the implantation, but also, the</p>	<p style="text-align: right;">Page 61</p> <p>1 summary of what you said?</p> <p>2 A I think so. But I -- I just want to --</p> <p>3 you know, urinary retention, that was pretty obvious</p> <p>4 by the elevated post void residual, as opposed to</p> <p>5 the voiding disorder that does continue. They're</p> <p>6 related but separate.</p> <p>7 Q I -- I --</p> <p>8 A They're related but separate in this.</p> <p>9 MR. BARLOW: Robin, can we take a</p> <p>10 break for a moment?</p> <p>11 I need to make a phone call.</p> <p>12 MS. SHAH: Sure.</p> <p>13 MR. BARLOW: Thank you.</p> <p>14 (Whereupon, there was a recess taken</p> <p>15 from 2:40 p.m. to 2:43 p.m.)</p> <p>16 BY MS. SHAH:</p> <p>17 Q Okay. So, Doctor, I'd like to start with</p> <p>18 the vaginal pain and dyspareunia that you mention in</p> <p>19 your report.</p> <p>20 We discussed earlier that Ms. Freeman</p> <p>21 is, at this time after her implant surgery, post</p> <p>22 menopausal. Is that correct?</p> <p>23 A Yes.</p> <p>24 Q And can post menopausal women be at risk</p>

<p style="text-align: right;">Page 62</p> <p>1 for pain with intercourse?</p> <p>2 A They can. There wasn't any evidence in</p> <p>3 the record that she had significant pain prior to</p> <p>4 her implant. Even if she went through meno- -- if</p> <p>5 she went through menopause normally, naturally, I</p> <p>6 would suspect it to have occurred somewhere around</p> <p>7 the age of 50, 51.</p> <p>8 There was no evidence in the record that</p> <p>9 she had any pain while she was in menopause before</p> <p>10 she had the implant. But the answer -- the short</p> <p>11 answer to your question is, Yes. Usually, it takes</p> <p>12 somewhere between 10 to 15 years after menopause,</p> <p>13 minimum, to start developing pain -- vaginal pain</p> <p>14 from it.</p> <p>15 Q And Ms. Freeman had her hysterectomy</p> <p>16 around, we said, 1976 or 1979. Right?</p> <p>17 A Correct.</p> <p>18 Q So 10 to 15 years after would be, let's</p> <p>19 say, in the 1990s?</p> <p>20 A Well, I'll just say this: She had her</p> <p>21 hysterectomy and, by report, had her ovaries</p> <p>22 removed.</p> <p>23 We don't know if -- we -- we don't have</p> <p>24 the pathology from that, so we can't verify that.</p>	<p style="text-align: right;">Page 64</p> <p>1 which hormones it was. I was not clear to me.</p> <p>2 I -- I -- I would make an assumption.</p> <p>3 But it's only assumption, and it can't be a -- a --</p> <p>4 a definitive decla- -- declaration that it's for her</p> <p>5 menopause.</p> <p>6 Q But your assumption would be that the</p> <p>7 pellets were implanted for menopause?</p> <p>8 A Correct. But without -- without -- I --</p> <p>9 I didn't see where that was listed -- de- -- de- --</p> <p>10 de- -- definitively listed, what the -- what the</p> <p>11 hormone was, and -- so I can't say for sure.</p> <p>12 I don't recall. I'd have to look at the</p> <p>13 record. I don't recall if the record specified the</p> <p>14 actual hormone.</p> <p>15 Q And, Doctor, just so we have a clean</p> <p>16 record from the discussion before, you would agree</p> <p>17 that a woman in her 50s who's post menopausal can be</p> <p>18 at risk for pain with intercourse?</p> <p>19 A In her 50s, it's possible. It's pretty</p> <p>20 uncommon, if menopause occurred.</p> <p>21 Well, it's -- it's -- it's possible, but</p> <p>22 it's pretty uncommon. I would agree with that.</p> <p>23 Q And, Doctor, on page 19 of your</p> <p>24 report --</p>
<p style="text-align: right;">Page 63</p> <p>1 And I didn't see anything that verified that she</p> <p>2 actually went through surgical menopause at that</p> <p>3 time. So, yeah, she had her ova- -- her uterus</p> <p>4 removed at that time.</p> <p>5 Q Well, your report, Doctor, mentions</p> <p>6 her -- her -- her procedure on August 16th, 2010, to</p> <p>7 have --</p> <p>8 A I'm -- I'm --</p> <p>9 Q -- hormone pellets --</p> <p>10 A -- sorry. I'm --</p> <p>11 Q -- implanted.</p> <p>12 A -- sorry. Say that again?</p> <p>13 Q Sure.</p> <p>14 Your report references Ms. Freeman's</p> <p>15 procedure from August, 2010, to have hormone pellets</p> <p>16 implanted?</p> <p>17 A Yes. When she was --</p> <p>18 Q And what --</p> <p>19 A -- and -- when she was in her 50s. Yes.</p> <p>20 Q Right.</p> <p>21 And -- and what -- and for what purpose</p> <p>22 would hormone pellets be implanted?</p> <p>23 A Well, without the record, I can't</p> <p>24 specifically answer. I didn't see -- I didn't see</p>	<p style="text-align: right;">Page 65</p> <p>1 A Yes, ma'am.</p> <p>2 Q -- among the signs and symptoms of</p> <p>3 conditions that -- that you note were not present,</p> <p>4 you note that mesh erosion was not present. Is that</p> <p>5 correct?</p> <p>6 A Correct. I didn't see any evidence in</p> <p>7 the record of that.</p> <p>8 Q You would agree with me, Doctor, that</p> <p>9 there's no evidence of erosion with respect to the</p> <p>10 TVT-O or Prolift+M mesh that Mrs. Freeman was</p> <p>11 implanted with?</p> <p>12 MR. BARLOW: Can you just -- excuse</p> <p>13 me. Object to form.</p> <p>14 Are -- are you talking about a -- a</p> <p>15 specific time frame or ever?</p> <p>16 MS. SHAH: Ever. So let me ask it</p> <p>17 again.</p> <p>18 MR. BARLOW: Okay.</p> <p>19 BY MS. SHAH:</p> <p>20 Q Would you agree, Doctor, that there's no</p> <p>21 evidence in Ms. Freeman's medical records -- in any</p> <p>22 of her records -- that there was erosion of the</p> <p>23 TVT-O mesh or Prolift+M mesh?</p> <p>24 A Yeah. I didn't see any reference to mesh</p>

<p style="text-align: right;">Page 66</p> <p>1 erosion in the records I reviewed.</p> <p>2 Q Did you see any evidence of mesh exposure</p> <p>3 of the Prolift+M or TVT-O mesh?</p> <p>4 A I did not. In the records I reviewed, I</p> <p>5 did not.</p> <p>6 Q And then, Doctor, you also note in your</p> <p>7 report that Mrs. Freeman was diagnosed with vaginal</p> <p>8 atrophy in 2013 -- is that correct? --</p> <p>9 A That's correct.</p> <p>10 Q -- on page 5, I believe?</p> <p>11 I'm sorry?</p> <p>12 A I said, "That is correct."</p> <p>13 Q And what is vaginal atrophy?</p> <p>14 A So I -- I think -- if you could -- would</p> <p>15 you be kind enough to just point to me the date that</p> <p>16 I had that, please?</p> <p>17 Q Sure.</p> <p>18 It was on page 5 -- February 6th,</p> <p>19 2013 -- atrophic -- a --</p> <p>20 A Great. Thank you very much.</p> <p>21 Q -- atrophic vaginitis.</p> <p>22 Sure.</p> <p>23 A Yeah. So and -- and -- and -- and --</p> <p>24 and -- and I just wanted to check that.</p>	<p style="text-align: right;">Page 68</p> <p>1 call it vaginitis -- "atrophic vaginitis," it's not</p> <p>2 an infection. So I -- I can't say I agree with</p> <p>3 "chronic vaginal infections."</p> <p>4 Q Okay.</p> <p>5 A I would agree with the general term of</p> <p>6 "urinary dysfunction."</p> <p>7 Q Can vaginal atrophy also lead to painful</p> <p>8 sexual intercourse?</p> <p>9 A It can.</p> <p>10 Q And does your report, Doctor, discuss</p> <p>11 vaginal atrophy as a potential cause of Ms. Freeman</p> <p>12 dyspareunia?</p> <p>13 A No. Because when you take the evidence</p> <p>14 that's in the record, she does not have pain that's</p> <p>15 consistent with pain associated with atrophy, which</p> <p>16 is more -- going to be more global throughout the</p> <p>17 vagina.</p> <p>18 She was identified, especially early</p> <p>19 on -- well, not early on -- but in 2013, of having a</p> <p>20 very specific location that Dr. Easter identified</p> <p>21 that was painful associated with a specific finding</p> <p>22 of -- of -- of -- of a band of tissue.</p> <p>23 That's not what we see with vaginal</p> <p>24 atrophy. So it was -- the -- the pain pattern and</p>
<p style="text-align: right;">Page 67</p> <p>1 Yeah. So she had -- and her exam was</p> <p>2 consistent with that, which means, some thinning of</p> <p>3 the vaginal wall.</p> <p>4 Q And is the thinning of the vaginal wall</p> <p>5 caused by decreased estrogen levels?</p> <p>6 A It can be.</p> <p>7 Q And do women with vaginal atrophy have a</p> <p>8 greater chance of chronic vaginal infections and</p> <p>9 urinary function problem?</p> <p>10 A Women with vaginal atrophy -- that's a</p> <p>11 general phrase. Because there are all certain --</p> <p>12 certainly, there's different degrees of vaginal</p> <p>13 atrophy.</p> <p>14 I would have to say that women with</p> <p>15 significant or severe vaginal atrophy, I would agree</p> <p>16 with you that they are at the risk -- those risks of</p> <p>17 increased -- mostly increased urinary tract</p> <p>18 infections.</p> <p>19 And I think the other thing you said was</p> <p>20 vaginal discharge?</p> <p>21 Q I said "chronic vaginal infections" and</p> <p>22 "urinary function problems."</p> <p>23 A I don't know about chronic vaginal</p> <p>24 infections, per se. Because they -- although they</p>	<p style="text-align: right;">Page 69</p> <p>1 the examination of what was causing her pain and</p> <p>2 dyspareunia was not consistent with dyspareunia from</p> <p>3 vaginal atrophy.</p> <p>4 Q And does your report, Doctor, explain how</p> <p>5 you ruled out vaginal atrophy?</p> <p>6 A Well, you rule it out by the</p> <p>7 preponderance of the evidence that's in the record.</p> <p>8 That's how it's ruled out. And my experience,</p> <p>9 knowledge, having treated patients with these</p> <p>10 conditions for 30 years.</p> <p>11 People who have vaginal atrophy cannot</p> <p>12 specifically locate the pain -- the location of</p> <p>13 their pain. They will have global vaginal pain.</p> <p>14 Q I appreciate that, and I appreciate the</p> <p>15 explanation. I'm just asking if your report has</p> <p>16 that explanation of how you ruled vaginal atrophy</p> <p>17 out in it?</p> <p>18 A Oh, I don't think I -- I don't think I</p> <p>19 put that in the report. No. But we had a chance</p> <p>20 here to talk about it.</p> <p>21 Q And then, Doctor, I'd like to talk to you</p> <p>22 about scarring. Is -- is it true that any surgery</p> <p>23 in the vagina, regardless of whether mesh is used,</p> <p>24 can cause scarring?</p>

<p style="text-align: right;">Page 70</p> <p>1 A So, you know, the answer to that is, 2 Yes. But when you say "scarring," that's a general 3 term. 4 Every operation -- 5 Q Uh-huh. 6 A -- relies upon some scarring. But is the 7 scarring normal? 8 Now, I can say it's snowing outside, and 9 it could just be a couple of flu- -- a couple of 10 flurries, or it could be a blizzard. 11 So just saying "snowing," doesn't -- 12 it -- just doesn't tell you what it is. And the 13 same as here with just saying, Can any surgery cause 14 scarring? 15 And yes, any surgery could -- every 16 surgery causes scarring, in fact. The question is: 17 Is the scar- -- is the scarring normal or not? In 18 this case, it was not. 19 Q And, Doctor, going back to Ms. Freeman's 20 vaginal pain, would you agree that Ms. Freeman 21 continues to experience vaginal pain even after 22 having her Prolift+M mesh and TVT-O removed? 23 A Yes. And I think I did address that in 24 my report, that taking the mesh out and the multiple</p>	<p style="text-align: right;">Page 72</p> <p>1 degradation of Prolift+M and TVT-O as a potential 2 cause of -- of pelvic pain and dyspareunia. 3 Did you see any evidence in the pathology 4 reports or any other records of mesh degradation of 5 Ms. Freeman's mesh? 6 A So degradation is not something that 7 pathologists typically look for. The hospital 8 pathologist is not looking for a degradation of the 9 mesh. 10 So no pathology report from any hospital 11 that has been -- that -- to my knowledge, has done 12 the examination required to find degradation in 13 material. 14 What we do know is that when those 15 examinations are performed on explanted 16 polypropylene materials is that greater than 17 50 percent of them will have evidence of 18 degradation. 19 So the answer is, yeah, the hospital 20 pathologist doesn't have it, because they don't look 21 for it. 22 Q Who does look for it? 23 A Usually, that's done as more of a -- a 24 research protocol because of the requirements that</p>
<p style="text-align: right;">Page 71</p> <p>1 procedures that had been required to remove that 2 mesh also changes -- causes changes in the vaginal 3 wall that leads to the permanence, in this case, of 4 the pain that she has. 5 So, yes, it's true. The mesh has been 6 removed and she still does have the vaginal pain 7 and dyspareunia. But part of that is 8 attributable -- 9 Q And then -- 10 A I'm sorry. 11 Q -- Doctor -- 12 A Part of that is attributable, not only to 13 the effect of those meshes on the vaginal tissue, 14 but also the effect of the required, medically 15 indicated and necessary revision procedures that she 16 has had performed. 17 Q So it's your opinion that the revision 18 surgery themselves have also contributed to her 19 pelvic pain and painful intercourse? 20 A Yes. Those medically indicated and 21 required, necessary that -- revisions that she had 22 performed also can contribute to the vaginal pain 23 and dyspareunia. Yes. 24 Q And, Doctor, your report also mentions</p>	<p style="text-align: right;">Page 73</p> <p>1 are the required -- the techniques that are required 2 to find it. 3 Q So do you know, one way or another, 4 Doctor, if the Prolift+M mesh or the TVT-O mesh that 5 was implanted in Ms. Freeman degraded? 6 MR. BARLOW: Object to form. 7 A Well, I know -- I know that the 8 preponderance of the evidence is that more than 9 50 percent of them -- so to a medical probability, 10 it has. That's what I know. 11 BY MS. SHAH: 12 Q Fair enough. 13 But you cannot say with certainty that 14 the specific mesh that was implanted in Ms. Freeman 15 degraded. Is that fair? 16 A Well, when you use the word "certainty," 17 I can't probably say that about very much of 18 anything. So, you know, you're right. That mesh 19 has not been looked at. 20 But when we talk about whether or not, 21 you know, more than -- the -- the majority of them 22 have degraded, the majority of them will have 23 degraded. I can't say for sure in hers, 'cause I 24 don't believe it's been looked at.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q And you, yourself, haven't looked at any 2 of Ms. Freeman's explanted mesh. Is that right? 3 A I've just looked at some pictures of it. 4 That's it. 5 Q And, Doctor, did any of Ms. Freeman's 6 doctors diagnose her with hypertonic pelvic floor 7 disorder? 8 A I -- the physical therapist who treated 9 her had documented her having hypertonic pelvic 10 floor. I don't know that they use that 11 terminology, but it's a terminology that -- there 12 are a variety of different diagnoses that are used 13 to really describe the same thing. 14 It can be muscle tightness. It can be 15 levator spasm. It can be hypertonic pelvic floor 16 disorder. Nobody used that specific terminology, I 17 believe. The physical therapist certainly did 18 identify levator spasm and pelvic muscle tightness. 19 Q Could Ms. Freeman's vaginal atrophy have 20 caused her hypertonic pelvic floor disorder? 21 A Well, it is possible that vaginal atrophy 22 that severe is causing significant dyspareunia, 23 which I don't believe it is in this case, can use 24 hypertonic pelvic floor disorder.</p>	<p style="text-align: right;">Page 76</p> <p>1 But hypertonic pelvic floor does cause 2 lower abdominal pain and pelvic pain. And I think 3 her left-sided pelvic pain and her -- what she 4 described as difficulty with walking, standing, and 5 performing some routine activities of daily living, 6 is really something that the -- is consistent with 7 hypertonic pelvic floor pain, which also includes 8 the muscles of the lower anterior abdominal wall 9 and -- and lower back. 10 But specifically, the muscles. I'm not 11 talking about her SI -- in her SI joints. So yeah, 12 I do think that the abdominal pain -- 13 Q So -- 14 A -- that she has on the left side, 15 especially the lower abdominal pain that she has, is 16 partly contributed to by the -- is a -- the 17 hypertonic pelvic floor is a significant 18 contributing factor to those -- to that sort of 19 pain. 20 Q So, Doctor, you do not attribute upper 21 abdominal pain, her GERD, or her GI discomfort to 22 the mesh. Is that correct? 23 A I don't. 24 Q And, Doctor, are you -- are you</p>
<p style="text-align: right;">Page 75</p> <p>1 However, she was not really diagnosed 2 with this until it was probably she -- 3 Dr. Siddighi's note was probably the first one that 4 identified -- well, actually, Dr. Easter identified 5 pelvic floor muscle spasm, also. But Dr. Siddighi 6 and Dr. Kim also identified it. 7 And that would have been, if we look in 8 at the notes, several years subsequent to that note 9 you -- you had asked me about earlier with atrophic 10 vaginitis. 11 So the answer is, yes -- 12 Q Okay. Doctor -- 13 A -- yes, it can, but it probably did not, 14 based on the -- based upon the preponderance of the 15 evidence and to a degree of medical probability. 16 Q And then, Doctor, I believe you 17 mentioned earlier that you -- you believe that 18 Ms. Freeman's mesh caused her abdominal pain. Is 19 that right? 20 A Well, the -- I'm not talking about her 21 upper abdominal pain. I'm not talking about her 22 having -- having GERD. I'm not talking of her -- 23 about her having GI discomfort. And we talked a 24 little bit about that earlier.</p>	<p style="text-align: right;">Page 77</p> <p>1 attributing any bowel problems Ms. Freeman may have 2 with the mesh? 3 A I do think that some of her defecatory 4 disorder -- and I'm not so much talking about 5 constipation, which is different than difficulty 6 with defecation. 7 I'm talking about her -- her difficulty 8 she had, at times, having a bowel movement. Not -- 9 I'm not talking about the frequency of the bowel 10 movement, which is what constipation is. But I -- 11 that's about the only GI symptom that I would 12 attribute it -- to her hypertonic pelvic floor. 13 Q So what GI symptoms are you attributing 14 to the mesh? 15 A I think some of her difficulty with 16 defecation is what I've ruled -- is the one I'm 17 talking about. 18 Q Doctor, do you have Dr. Elliott's 19 transcript in front of you, Exhibit 6? 20 A I do. 21 Q Can you turn with me to page 4 of Dr. 22 Elliott's deposition -- again, in the small pages? 23 Let me know when you're there. 24 A Yup.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q And if you could just take a moment and 2 read the first question and answer on page 42 to 3 yourself. 4 A Okay. 5 Q You see there, Doctor, that Dr. Elliott 6 testified that he does not attribute any of 7 Ms. Freeman's bowel problems to the mesh? 8 A Well -- 9 MR. BARLOW: Object to form. 10 A -- I'm not going to -- I'm not going to 11 answer this question. I haven't had a chance to 12 review this transcript at all. And so I'm not going 13 to take a -- I -- I can't answer something that's 14 just taken out of context, one page. 15 I'd be happy to answer questions with 16 regard to it once I've read the transcript. I -- I 17 would also just comment that he first says -- he 18 doesn't say that. He was asked that question, but 19 that's not what he said. 20 He said, "That's a very generalized 21 statement." And he said he would agree that 22 irritable bowel and bowel irregularities would not 23 be linked to the presence of the mesh. 24 I don't know what else he said in the</p>	<p style="text-align: right;">Page 80</p> <p>1 A -- I -- I would agree with what I said 2 earlier. 3 I don't think that her diarrhea, I don't 4 think her upper abdominal pain, I don't think her 5 GERD symptoms, I don't think the frequency of her 6 bowel movement is necessarily -- is related to the 7 mesh or the surgeries that have been done to treat 8 complications associated with the mesh. 9 Q Okay. And, Doctor, am I correct that 10 your report does not attribute any back pain 11 Ms. Freeman may have experienced to the mesh? 12 A I did not. 13 Q And just so we're clear, Doctor, you do 14 not attribute any back pain she may have had to the 15 mesh? 16 A If we -- if we're considering that the 17 buttock is not part of the back, I would agree with 18 you. 19 Q Okay. Doctor, are you attributing any 20 urinary tract infections Ms. Freeman has had to the 21 mesh? 22 A So I'm not contributing specifically 23 infections to her mesh. No. 24 MS. SHAH: Thank you, Doctor. I</p>
<p style="text-align: right;">Page 79</p> <p>1 rest of this deposition, so I can only repeat what 2 he answered and just leave it at that. 3 Q Do you agree, Dr. Bercik, that irritable 4 bowel and bowel irregularities would not be 5 logically linked to the presence of the mesh? 6 A "Bowel irregularities" is a very general 7 statement. I mean, defecatory disorder would fall 8 in the category of bowel irregularities. 9 I would agree that irritable -- irritable 10 bowel syndrome of things like diarrhea and the 11 upper -- upper abdominal pain -- and again, 12 irritable bowel syndrome can cause constipation is 13 not the same as defecatory disorders. 14 And that's why, you know, I can't answer 15 this question with regards to -- irri- -- ir- -- 16 ir- -- bowel irregularities -- burping is -- can be 17 considered a bowel irregularity if you do it too 18 much. 19 So it's kind of a general -- it's kind of 20 a general term. But I would agree that I don't 21 think that -- 22 Q And so -- 23 A I -- I -- 24 Q -- and, Doctor --</p>	<p style="text-align: right;">Page 81</p> <p>1 believe that's all I have. 2 MR. BARLOW: We will reserve our 3 questions for the time of trial. Thank 4 you, Robin. 5 MS. SHAH: Thank you all. Thank you 6 everyone. 7 (Whereupon, the deposition was 8 concluded at 3:07 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

Richard S. Bercik, M.D.

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1	C E R T I F I C A T E	
2	I hereby certify that I am a Notary Public,	
3	in and for the State of Connecticut, duly	
4	commissioned and qualified to administer oaths.	
5	I further certify that the deponent named in	
6	the foregoing deposition was by me duly sworn, and	
7	thereupon testified as appears in the foregoing	
8	deposition; that said deposition was taken by me	
9	stenographically in the presence of counsel and	
10	reduced to typewriting under my direction, and the	
11	foregoing is a true and accurate transcript of the	
12	testimony.	
13	I further certify that I am neither of	
14	counsel nor attorney to either of the parties to	
15	said suit, nor am I an employee of either party to	
16	said suit, nor of either counsel in said suit, nor	
17	am I interested in the outcome of said cause.	
18	Witness my hand and seal as Notary Public	
19	this _____ day of _____, 2019.	
20		
21	_____	
22	San Edwards	
23	Notary Public	
24	My commission expires: 11/30/2021	